

reasonable price. (At the same time, each of the networks was seeking a significant reduction from the rights fees it paid in 1986 for the basic Sunday and Monday packages.) Had the League not turned to a cable outlet, games that had been carried nationally would have been carried on a regional basis only, fan options would have been limited, and the NFL clubs would have received significantly lower television revenues.

The League therefore decided to offer a package including those games -- which otherwise would have been dropped as national telecasts altogether -- to ESPN. The ESPN agreement, which averaged \$50 million per season, allowed the clubs to maintain their television income at approximately the same level as it had been in 1986 and thereby to avoid what would have otherwise been a dramatic fall in revenue. It also took games that would otherwise have simply been regional telecasts and made them available throughout the country.

In short, the NFL's Sunday night cable package is simply not an example of sports events "migrating" or being "siphoned" from broadcast television. Broadcast networks were not outbid as a result of cable's revenue structure. The cable networks secured the Sunday night games only after the broadcast network that had originally televised them (ABC) indicated that it was no longer interested in doing so; the other two major networks (NBC and CBS) already had established

Sunday NFL packages. The net result of the cable agreements has been to make more football available to more fans.

2. Paragraph 15: Pay-Per-View.

Paragraph 15 of the Notice also seeks comments concerning future expansion of NFL telecasts, including pay-per-view. Any new NFL television contracts will take effect no sooner than one year from now, and their terms cannot now be forecast accurately. Those terms will, in large part, depend on actual and projected technological and economic conditions at the time the contracts are negotiated.

Nonetheless, the League expects the broadcast networks to continue to play a very substantial role in televising NFL games in the foreseeable future and the NFL will seek to enter into new contracts with each of its current broadcast carriers.

With respect to possible use of pay-per-view television, the League's position has been clear. No regular season or post-season NFL game has ever been shown on pay-per-view television, and no games will be shown on pay-per-view during the current television contracts. Moreover, with respect to any later use of pay-per-view television, Commissioner Tagliabue has made these commitments to Committees of both the House and Senate: first, the Super Bowl will remain on broadcast television through at least the year 2000; second, no playoff game will be moved from broad-

cast television without first giving timely notice to the Commerce and Judiciary Committees in both houses of Congress; and third, any subsequent pay-per-view experiment during the regular season will initially be conducted on a limited, test-market basis and will be designed to supplement the games available on the broadcast and cable networks. Viewers would continue to have games available on broadcast or basic cable television and would have the further option of watching an additional game on a pay-per-view basis. If the viewer were content with the games available on broadcast or cable television, he could watch those games at no more cost than he does today. In short, such a package, if implemented, would again expand both output and consumer choice.^{11/}

3. Paragraph 15: League Control Over Television Rights.

Paragraph 15 of the Notice also notes that the NFL sells all of the television rights for all its teams and asks whether this "unique arrangement . . . could accelerate or dampen migration of sports programming." Because there has been no migration of NFL programming, the question is almost entirely hypothetical. Nonetheless, the League's view is that its ability to sell all of the television rights for all of its teams is of significant benefit in controlling and

^{11/} These commitments have been made on numerous occasions, most recently in connection with consideration of the Cable Act. One such example, a letter from Commissioner Tagliabue to Representative John Dingell, is attached as Exhibit F.

limiting any potential future migration of sports programming. Because all programming is sold by the League, individual clubs cannot market their regular season or post-season games in a way that might maximize short term revenues for the club (for example, by selling games to superstations, cable systems, or pay-per-view), but would be detrimental to the League's long-term interests.

In addition, centralized control of television rights means that more popular teams cannot exploit their current success on the playing field in a way that disadvantages other teams, either by obtaining a potentially more lucrative non-broadcast contract, or by dominating the broadcast stations in a way that forces those less popular teams off broadcast television and onto a cable or pay-per-view system. Finally, the NFL's ability to sell all of the television rights means that a single entity is responsible for establishing and implementing television policies for the entire League and can be held accountable for those policies.

League control over television rights makes it easier to avoid major shifts in programming. And it is clear that there is nothing inherent in the process by which leagues (as opposed to individual teams) make those decisions that point to a shift in programming away from broadcast television

**CAUSES AND CONSEQUENCES OF
SPORTS PROGRAMMING MIGRATION**

A. Causes

1. Paragraph 23: Football In The Entertainment Market.

Paragraph 23 of the Notice seeks comment on the "economic causes of past and potential future sports programming migration." NFL programming has not migrated from broadcast to cable television, and it is difficult for the NFL to comment on the causes of such migration to the extent it may have occurred with other sports programming. There are, however, certain points that can be made.

Sports programming, such as NFL football, competes with a wide range of sports and non-sports entertainment. This fact has been recognized by numerous observers. For example, then-Justice Rehnquist described the NFL clubs as "joint venturers who produce a product, professional football, which competes with other sports and other forms of entertainment in the entertainment market." National Football League v. North American Soccer League, 459 U.S. 1074, 1079 (1982) (Rehnquist, J., dissenting from denial of certiorari). And player agent Leigh Steinberg recently testified that the NFL is "part of the entertainment business" and "competes with a whole variety of activities for entertainment spending." Those competitors "can include other

sports, Home Box Office, Nintendo, Walt Disney World."

(McNeil v. NFL, Tr. 2274-76.)

The financial difficulties currently claimed by the networks with respect to their baseball and football contracts are a direct result of this competition. Particularly in recent years, the networks have faced increasing competition as counter-programming has become more sophisticated. At the same time, advertisers have become less willing to pay a premium for sports programming. Thus, as a seller of sports programming, the NFL recognizes that buyers have many programming options with which to attract audiences and that numerous alternatives are available should the relative price of sports programming be too high.

The buyers' side of the marketplace has changed rapidly as well. As the Commission knows only too well, the networks no longer have the dominant position in the marketplace, and independent channels, as well as national and regional cable networks, have grown in importance and strength. To the extent that the networks can no longer deliver the audiences they once could, advertisers will naturally tend to look for other vehicles with which to reach consumers and will want to pay less to buy time on the networks.

2. Paragraph 23: Economic Factors/Player Costs.

Nor can other economic factors be ignored. The cost of sports operations, principally in the form of player salaries and benefits, has risen sharply over the past decade. In 1980, for example, NFL clubs spent approximately \$166 million on player salaries and benefits, which amounted to 44 percent of League revenues. By 1992, that had risen to approximately \$900 million or some 56 percent of League revenues and may well increase even beyond that in the future. Similar increases have occurred in other sports, requiring that leagues and teams generate additional revenue to attract and retain player talent. In 1987, for example, it would have been unreasonable both economically and to the fans for the NFL to have declined to enter into a contract with ESPN.

Notwithstanding these changes in the marketplace, the NFL has been able to maintain and even expand its presence on broadcast television because of the strength and popularity of its programming. Even today, all games are shown on broadcast television and over 90 percent of NFL games are televised exclusively on broadcast television, including all of the post-season playoff games. The NFL televises a far greater percentage of its games on broadcast television than any other professional or major college sport.

3. Paragraph 24.

Paragraph 24 of the Notice seeks comment on "the impact of new technologies on sports programming migration." It is axiomatic that without the new technologies, no "migration" would have occurred. But such technologies have undoubtedly made more sports programming available, and have unquestionably had that effect in the NFL.

As explained above, there is no evidence the NFL's use of cable is a result of cable being able to outbid broadcasters for traditional or core broadcast programming. Nor has the NFL used cable in an effort to charge directly a more narrow target audience, as suggested in the Notice. To the contrary, NFL games televised on ESPN and TNT are televised nationally, and in the areas where interest in the game is most intense -- i.e., the market of the home and visiting teams -- the games are shown on broadcast television. Moreover, the NFL has never sought to serve a narrow segment of hard-core fans. Rather, the League has consistently worked to expand its fan base, and to increase the number of persons who both attend games and watch them on television.

The effect of the retransmission consent provisions of the 1992 Cable Act is difficult to predict. But for a variety of reasons, including the very limited use of cable television by the NFL, those provisions are not expected to have a major impact on NFL television patterns in

the near term. Retransmission consent is intended to correct for certain effects of the compulsory license, which thus far has not affected the televising of NFL games. Nonetheless, if the effect of the retransmission consent rules is to strengthen the competitive ability of the broadcasters, it is likely that more sports programming will remain on broadcast television over the long term.

4. Paragraph 25.

Paragraph 25 seeks comment on League television strategies. Throughout the past 30 years, the NFL's strategy has been relatively straightforward -- a heavy, indeed overwhelming, reliance on broadcast television in an effort to (i) guarantee that fans in every league city will have access to their team's games as well as (ii) to generate substantial amounts of equally-shared revenues for the clubs. Over time, the significance of shared television revenue has grown to the point where it is the largest single source of revenue for NFL teams. In 1993, each NFL team will receive over \$39 million from the network contracts, a sum that is projected to represent over 60 percent of the average club's revenue. A breakdown of League revenue sources for the 1991 season, the most recent season for which complete data is available, is found at Exhibit G.^{12/}

^{12/} This equal sharing of television revenue, in concert with certain player employment practices such as the draft and the
(continued...)

Because of the relatively limited number of home games that each NFL team plays, it is important to maximize attendance revenues. The guarantee that all of the teams' road games will be brought back to the home market helps to promote the club locally and thereby to bolster attendance. Similarly, the policy of not televising home games in the home city unless they are sold out at least 72 hours in advance provides an incentive for local fans to purchase tickets for the games.^{13/} If home games were always televised, attendance levels would decline, particularly for some of the weaker teams, which would further weaken those clubs. Certain clubs, such as the New York Giants and Washington Redskins, are able to sell all the tickets to all of their games irrespective of their performance on the field.

^{12/} (...continued)

first refusal/compensation system, makes an important contribution to the maintenance of balanced competition among the 28 clubs. If the proportion of equally shared television revenues were to decline, the resulting revenue disparities could have the effect of reducing competitive balance and making NFL football a less attractive entertainment product.

^{13/} The propriety of this policy has been recognized by courts and Congress for over 40 years. See, e.g., United States v. National Football League, 116 F. Supp. 319, 323-26 (E.D. Pa. 1953); Sports Broadcasting Act, 15 U.S.C. § 1292 (permitting blackout of home city on days when local team is playing at home); 47 U.S.C. § 332 (permitting home city blackout on a day when a home game is being played and the game is not sold out 72 hours in advance).

In many other cities, however, attendance levels are critically dependent on the team's performance on the field.^{14/}

5. Paragraph 27.

Paragraph 27 seeks comment on the effect of the antitrust exemption embodied in the Sports Broadcasting Act of 1961, 15 U.S.C. § 1291 et seq. The NFL believes that no legislative or regulatory action with respect to the Sports Broadcasting Act is appropriate. The Act has served the public interest in precisely the manner contemplated by Congress in 1961. Because of the Sports Broadcasting Act, the NFL has been able to provide ever-expanding amounts of televised football entertainment to fans throughout the country. The Act has protected and supported the growth of college and high school football programs. It has allowed the League to generate equally shared revenue in amounts that have permitted an increase in the number of teams from 14 in 1961 to 28 today (and 30 in the near future), to expand the size of rosters from 35 players in 1961 to 53 in 1993, and to provide players with constantly growing levels of salaries and benefits. Moreover, by vesting in the League the ability to control the sale of television rights, the Act has permitted

^{14/} One striking example of this relationship is the Buffalo Bills. For the past three years, the Bills have both won the AFC championship and had the highest attendance in the League, averaging nearly 80,000 tickets sold for each game. By contrast, in the 1984 season, the Bills won only two games, and averaged ticket sales of just over half that amount, or approximately 46,500 per game.

1. Paragraphs 28-30.

New technologies, such as MMDS or DBS, may have the potential further to expand the range of choices to

New technologies, such as MMDS or DBS, may have

continued reliance on technologies that can deliver the
broadest possible audiences. The NFL's policies have never
been based on a "quick buck" strategy that could alienate fans

but ~~instead on an objective assessment of the League's long~~

CONCLUSION

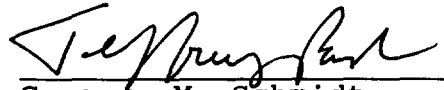
For the past thirty years, the League's television policies have given fans throughout America unparalleled access to high quality sports entertainment. Those policies have advanced the interests of consumers and have been consistent with expressed Congressional concerns. There is no reason to believe that those policies will change. As it has in the past, the League will explore and carefully evaluate the potential new technologies. But the League has no interest in alienating fans or causing public support for NFL football to diminish by making it difficult for fans to see its games on television. The NFL recognizes that its long-term economic welfare is clearly dependent on the continued

support of a broad and national fan base, and future television policies will be established based on that recognition.

Respectfully submitted,

THE NATIONAL FOOTBALL LEAGUE

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ITS ATTORNEYS

Dated: March 29, 1993

Exhibit A

Member Clubs of National Football League

AMERICAN FOOTBALL CONFERENCE

<u>Eastern Division</u>	<u>Central Division</u>	<u>Western Division</u>
Buffalo Bills	Cincinnati Bengals	Denver Broncos
Indianapolis Colts	Cleveland Browns	Kansas City Chiefs
Miami Dolphins	Houston Oilers	Los Angeles Raiders
New England Patriots	Pittsburgh Steelers	San Diego Chargers
New York Jets		Seattle Seahawks

NATIONAL FOOTBALL CONFERENCE

<u>Eastern Division</u>	<u>Central Division</u>	<u>Western Division</u>
Dallas Cowboys	Chicago Bears	Atlanta Falcons
New York Giants	Detroit Lions	Los Angeles Rams
Philadelphia Eagles	Green Bay Packers	New Orleans Saints
Phoenix Cardinals	Minnesota Vikings	San Francisco 49ers
Washington Redskins	Tampa Bay Buccaneers	

Exhibit B

1992 Nationally Televised Games

(All games carried on CBS Radio Network.)

Regular Season

Sunday, September 6	Los Angeles Raiders at Denver (night, TNT)
Monday, September 7	Washington at Dallas (night, ABC)
Sunday, September 13	Philadelphia at Phoenix (night, TNT)
Monday, September 14	Miami at Cleveland (night, ABC)
Sunday, September 20	Indianapolis at Buffalo (night, TNT)
Monday, September 21	New York Giants at Chicago (night, ABC)
Sunday, September 27	San Francisco at New Orleans (night, TNT)
Monday, September 28	Los Angeles Raiders at Kansas City (night, ABC)
Sunday, October 4	New England at New York Jets (night, TNT)
Monday, October 5	Dallas at Philadelphia (night, ABC)
Sunday, October 11	Los Angeles Rams at New Orleans (night, TNT)
Monday, October 12	Denver at Washington (night, ABC)
Thursday, October 15	Detroit at Minnesota (night, TNT)

Exhibit C

Broadcast Ratings for NFL Games

	<u>1981</u>	<u>1986</u>	<u>1992</u>	<u>1981-92 Change</u>
ABC	21.7	18.6	16.8	-23%
CBS	17.5	15.2	13.0	-26%
NBC	13.9	12.3	11.2	-19%
3-network Average	17.1	14.9	13.2	-23%

Exhibit D

Ratings for NFL Games on ESPN

<u>Year</u>	<u>Cable Only Rating</u>	<u>Combined Cable and Broadcast Rating (est.)</u>
1987	10.6	12.4
1988	9.3	10.4
1989	10.2	11.3
1990	9.8	11.0
1991	8.4	9.5
1992	8.4	9.3

Ratings for NFL Games on TNT

<u>Year</u>	<u>Cable Only Rating</u>	<u>Combined Cable and Broadcast Rating (est.)</u>
1990	7.0	8.3
1991	6.4	7.5
1992	6.9	7.9

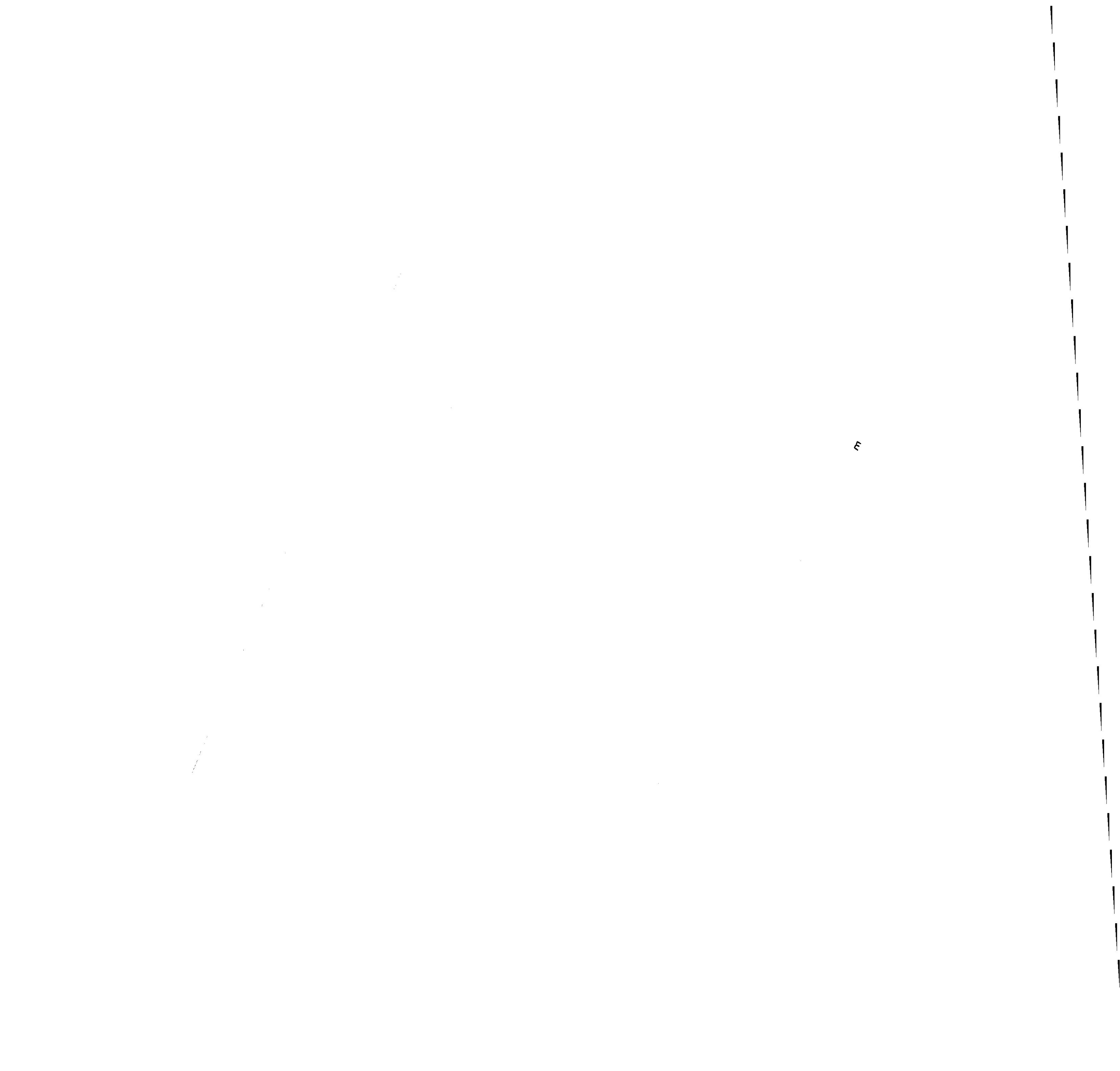


Exhibit E

Attachment

EFFECT OF NFL USE OF CABLE ON NUMBER OF GAMES
AVAILABLE TO NFL FANSE.g.: November 5, 1989, Sunday (Ninth Weekend)Dallas Cowboys vs. Washington Redskins
(in Washington, D.C.)1. IF GAME IS AT 1:00 P.M.

<u>TV Market</u>	<u>TV Coverage By Time Slot (EST)</u>		
	<u>1:00 P.M.</u>	<u>4:00 P.M.</u>	<u>8:00 P.M.</u>
Dallas	Cleveland @ Tampa Bay (NBC/KXAS-Channel 5)	Cincinnati @ LA Raiders	(no game)
	Dallas @ Washington (CBS/KDFW-Channel 4)		
Washington	Dallas @ Washington (CBS/WUSA-Channel 9)	Cincinnati @ LA Raiders (NBC/WRC-Channel 4)	(no game)

2. IF GAME IS AT 8:00 P.M.

<u>TV Market</u>	<u>TV Coverage By Time Slot (EST)</u>		
	<u>1:00 P.M.</u>	<u>4:00 P.M.</u>	<u>8:00 P.M.</u>
Dallas	Cleveland @ Tampa Bay (NBC/KXAS-Channel 5)	Cincinnati @ LA Raiders (NBC/KXAS-Channel 5)	*Dallas @ Washington
	Chicago @ Green Bay (CBS/KDFW-Channel 4)		
Washington	LA Rams @ Minnesota (CBS/WUSA-Channel 9)	Cincinnati @ LA Raiders (NBC/WRC-Channel 4)	*Dallas @ Washington

*Game is televised on KXAS/NBC in Dallas/Ft. Worth market and on WUSA/CBS in the Washington, D.C. market and ESPN in home cities of the two participating teams. Game is televised on ESPN in the remainder of the regional markets around the home cities.